

**FEDERAL TRADE COMMISSION (FTC)**  
**Statement of Regulatory Priorities (2023)**

The Federal Trade Commission is an independent agency charged with rooting out unfair methods of competition and unfair or deceptive acts or practices. Its mission is vital to the national interest because, when markets are fair and competitive, honest businesses and the public all benefit. The Commission also protects people who cannot protect themselves—from powerful corporate interests looking to squeeze out, trick, erode the wealth of, or otherwise undermine the economic autonomy of consumers. The Commission works to ensure well-functioning markets that protect people’s economic freedom, choice, and liberty. The agency’s vision is of “a vibrant economy fueled by fair competition and an empowered, informed public.”<sup>1</sup>

The Commission has a unique set of tools to carry out its mission, such as its market study tool, as well as traditions like public workshops and open comment dockets, to receive a wide breadth of information about a topic on which it is considering making policy.<sup>2</sup> Another tool is its ability to issue rules.<sup>3</sup> The Commission is committed to deploying all its tools, including issuing new rules and updating old ones, to achieve its mission.

**I. The Commission Is Using All Available Tools To Advance Its Missions**

**a. Rulemakings**

The Administrative Procedure Act rulemaking process creates significant opportunity for public participation to ensure that the agency is making well-considered policy decisions.<sup>4</sup> The rulemaking process for rules issued under section 18 of the FTC Act creates additional procedures to ensure participation.<sup>5</sup> Pursuant to these statutes, the Commission has been actively engaging members of the

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<sup>1</sup> Fed. Trade Comm’n, Strategic Plan for Fiscal Years 2022-2026, at 13 (Aug. 26, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/fy-2022-2026-ftc-strategic-plan.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/fy-2022-2026-ftc-strategic-plan.pdf).

<sup>2</sup> See 5 U.S.C. section 46(b); see also Fed. Trade Comm’n, A Brief Overview of the Federal Trade Commission’s Investigative, Law Enforcement, and Rulemaking Authority (May 2021), <https://www.ftc.gov/about-ftc/mission/enforcement-authority>.

<sup>3</sup> See 5 U.S.C. section 46(g).

<sup>4</sup> Fed. Trade Comm’n, Public Participation in the Rulemaking Process, <https://www.ftc.gov/enforcement/rulemaking/public-participation-rulemaking-process>.

<sup>5</sup> See *id.*

public to solicit their input in the Commission's means of pursuing its mission to ensure fair and competitive markets. Accordingly, the Commission and its staff continue to study the problems that rules can address, publish rulemaking documents, and engage with stakeholders and the public.

As to newly proposed consumer-protection rulemakings or rulemaking proceedings, in December 2021, the Commission published an ANPR (advance notice of proposed rulemaking) focused on the impersonation of government and businesses.<sup>6</sup> None of the public comments submitted in response to the ANPR opposed proceeding with the rulemaking. The Commission subsequently issued a proposed rule in October 2022.<sup>7</sup> This NPRM (notice of proposed rulemaking) would make it unlawful for persons to misrepresent that they are or are affiliated with a government or government officer or a business or business officer.<sup>8</sup> It also would make it unlawful to provide the means and instrumentalities for violations set out in this proposed rule.<sup>9</sup> This NPRM offered interested parties the opportunity to request an informal hearing, if they wished to present their position orally.<sup>10</sup> The opportunity to make an oral statement at an informal hearing is afforded by section 18 of the Federal Trade Commission Act and implemented in the Commission's Rules of Practice. The Commission received a timely request for an informal hearing. The hearing was held on May 4, 2023.<sup>11</sup> The Commission is reviewing comments submitted as part of the informal hearing along with those submitted in response to the Commission's NPRM.

On October 20, 2022, the Commission extended the comment period on another ANPR focused on issues concerning commercial surveillance and data security.<sup>12</sup> This ANPR described how Americans must routinely surrender their personal information to participate in basic aspects of modern life.<sup>13</sup> It canvassed the Commission's decades-long effort to protect Americans' privacy through case-by-case enforcement, policy work, and implementation of sectoral privacy laws, concluding that rulemaking could be a useful addition to the effort to protect individuals' personal privacy. The ANPR requested comment

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<sup>6</sup> 87 FR 72901 (Dec. 23, 2021).

<sup>7</sup> 87 FR 62741 (Oct. 17, 2022).

<sup>8</sup> 87 FR at 62746, 62747.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 62741.

<sup>11</sup> 88 FR 19024–25 (Mar. 30, 2023).

<sup>12</sup> 87 FR 63738 (Oct. 20, 2022).

<sup>13</sup> 87 FR 51273 (Aug. 22, 2022).

on 95 questions to ascertain whether unfair or deceptive practices relating to commercial surveillance and data security are prevalent and whether proceeding with one or more proposed rules is worthwhile.

Updating existing rules to meet new challenges is another important part of the Commission's rulemaking work. For example, as part of its regular review cycle, the Commission issued a NPRM proposing to revise its Health Breach Notification Rule to, among other things, clarify its scope, including its coverage of developers of many health applications; revise certain definitions; clarify what it means for a vendor of personal health records to draw PHR (personal health records) identifiable health information from multiple sources; modernize notice and expand the content of the notice.<sup>14</sup>

As part of the Eyeglass Rule regulatory review, the Commission hosted a public workshop<sup>15</sup> to explore information relating to the Rule changes proposed in its NPRM.<sup>16</sup> This workshop covered several topics, such as the costs and benefits related to the proposals set out in the NPRM. Staff is reviewing the 47 comments it received in response to this workshop.

The Commission also continues its general consumer protection work. For example, problematic negative option practices continue to be a source of consumer harm. These practices, among other things, saddle shoppers with recurring payments for products and services they never intended to purchase or did not want to continue buying. To address these ongoing problems, the Commission proposed amending the current Negative Option Rule with the objective of setting clear, enforceable performance-based requirements for all negative option features in all media.<sup>17</sup> These proposed changes are designed to ensure consumers understand what they are purchasing, to allow them to cancel their participation without undue burden or complication, and to address the most important issues related to negative option marketing, including misrepresentations, disclosures, consent, and cancellation.

As for its competition mission, the Commission continues to explore whether new rules that specify "unfair methods of competition" prohibited by section 5 of the FTC Act would help achieve the agency's mission. In its most recent strategic plan, the Commission observed that "[r]ules . . . inform businesses and their legal advisers about antitrust risks and can deter anticompetitive mergers and

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<sup>14</sup> 88 FR 37819 (June 9, 2023).

<sup>15</sup> 88 FR 18266 (Mar. 28, 2023).

<sup>16</sup> 88 FR 248 (Jan. 3, 2023).

<sup>17</sup> 88 FR 24716, 24726 (Apr. 24, 2023).

business practices” and that promoting competition can benefit all market participants, including workers.<sup>18</sup> In January 2023, the Commission proposed a rule addressing non-compete clauses in the labor market.<sup>19</sup> The Commission’s proposal discusses the startling prevalence of non-compete clauses in states where they are unenforceable, which can have a chilling effect on competitive conditions—just as enforceable clauses do. Clear rules that are easily understood help to clear up these misconceptions and achieve the desired results—in this case, more optimal job switching and matching. During the comment period for this NPRM, some commenters requested that this comment period be extended to give them additional time to respond; other commenters opposed such an extension and any potential delay. The Commission reviewed the extension requests and agreed to allow the public additional time to prepare and file comments. Thus, the comment period was extended until April 19, 2023, to provide commenters a total of 104 days from the public release of the NPRM.<sup>20</sup> To additionally ensure that all viewpoints were heard during the public comment period before determining how to proceed, the Commission also hosted a public forum on February 16, 2023, which examined this proposed rule and provided an opportunity for interested parties to directly share their experiences with non-compete clauses. In the months since proposing this rule, the Commission received more than 21,000 public comments, including from nurses, doctors, fast food workers, and hairdressers. Staff is reviewing the comments.

Also in furtherance of its competition mission, the Commission has been working for the past year with the Department of Justice (DOJ) to examine how the agencies can more readily detect potentially problematic mergers and acquisitions. Pursuant to the Hart-Scott-Rodino (HSR) Antitrust Improvements Act of 1976, the Commission, with the concurrence of the DOJ Assistant Attorney General, issues rules to ensure that the agencies receive the information needed to identify anticompetitive mergers and investigate them fully to determine whether to seek to block any the effect of which may be substantially to lessen competition or to tend to create a monopoly. After conducting a comprehensive review of the

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<sup>18</sup> Fed. Trade Comm’n, FTC Strategic Plan for Fiscal Years 2022 to 2026, at 16 (Aug. 26, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/fy-2022-2026-ftc-strategic-plan.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/fy-2022-2026-ftc-strategic-plan.pdf). Other competition problems could also be addressed by new rules. *Cf.* Exec. Order No. 14036, section 5(h)(i)–(vii) (July 9, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.

<sup>19</sup> 88 FR 3482 (Jan. 19, 2023).

<sup>20</sup> 88 FR 20441 (Apr. 6, 2023).

information that market participants currently submit in premerger notification filings, the Commission initiated a rulemaking to propose the collection of additional information that the agencies need to more effectively and efficiently identify transactions that warrant deeper investigation.<sup>21</sup> This proposed rule would also implement provisions of the Merger Filing Fee Modernization Act of 2022, which requires companies to disclose information in their HSR filings about subsidies received from certain foreign governments and entities.

#### **b. Service Delivery**

The Commission also takes actions that improve service delivery and customer experience and that reduce administrative burdens for the public. For example, the Commission plans to issue a final rule by early 2024 to update the filing system for Hart-Scott-Rodino Form and Instructions to the new cloud-based e-filing system, which will eliminate paper filings. As part of this process, FTC staff engaged with internal and external customers, including usability testing of beta software processes for submitting electronic HSR filings.

In sum, the Commission continues seeking public input and learning from its law-enforcement, consumer-education, market-monitoring, and other work to identify additional opportunities for new or improved rules to complement its other tools and the vital work of partner agencies and the states. Meaningful public engagement in rulemakings or for improvements to service delivery can deliver important benefits to the public and honest businesses, so the Commission will continue to seek the views of all affected communities.

## **II. Updates On Other Ongoing Rulemakings**

#### **a. Periodic Regulatory Review Program**

In 1992, the Commission implemented a program to review its rules and guides on a regular basis. The Commission's review program is patterned after provisions in the Regulatory Flexibility Act, 5 U.S.C. sections 601–612, and complies with the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission's review program is also consistent with section 5(a) of Executive Order 12866, which directs executive branch agencies to reevaluate periodically all their significant regulations.<sup>22</sup> Under

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<sup>21</sup> 88 FR 42178 (June 29, 2023).

<sup>22</sup> Exec. Order No. 12866, 58 FR 51735 (Sept. 30, 1993).

the Commission's program, rules and guides are typically reviewed on a ten-year schedule that results in more frequent reviews than are generally required by the Regulatory Flexibility Act. The public can obtain information on rules and guides under review and the Commission's regulatory review program generally at <https://www.ftc.gov/enforcement/rules/retrospective-review-ftc-rules-guides>.

The program provides an ongoing, systematic approach for obtaining information about the costs and benefits of rules and guides and whether there are changes that could minimize any adverse economic effects, not just a "significant economic impact upon a substantial number of small entities."<sup>23</sup> As part of each review, the Commission requests public comment on, among other things, the economic impact and benefits of the rule; possible conflict between the rule and state, local, or other federal laws or regulations; and the effect on the rule of any technological, economic, or other industry changes. Reviews may lead to the revision or rescission of rules and guides to ensure that the Commission's consumer protection and competition goals are achieved efficiently. Pursuant to this program, the Commission has rescinded 40 rules and guides promulgated under the FTC's general authority and updated dozens of other rules and guides since the program's inception.

### **(1) Newly Initiated and Upcoming Periodic Reviews of Rules and Guides**

During Fall 2023, the Commission plans to issue an updated ten-year review schedule. The Commission has initiated or announced plans to initiate periodic reviews of the following rules and guides:

*Alternative Fuels Rule, 16 CFR part 309.* On October 26, 2023, as part of the systematic review of all Commission rules, the Commission initiated a periodic review of the Alternative Fuels Rule (formally "Labeling Requirements for Alternative Fuels and Alternative-Fueled Vehicles") by publishing a notice seeking public comments on the effectiveness and impact of the Rule. 88 FR 73549 (Oct. 26, 2023). The public comment period will close on December 26, 2023.

*Cooling-Off Rule, 16 CFR part 429.* By the end of 2023, as part of the systematic review of all Commission rules, the Commission plans to initiate a periodic review of the Cooling-Off Rule (formally "Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations") by publishing a notice seeking public comments on the effectiveness and impact of the Rule.

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<sup>23</sup> 5 U.S.C. section 610(a).

Most recently, on January 9, 2015, the Commission amended the Cooling-Off Rule by increasing the exclusionary limit for all door-to-door sales at locations other than a buyer's residence from \$25 up to \$130.<sup>24</sup> Under that final rule, the revised definition of door-to-door sale now distinguishes between sales at a buyer's residence and those at other locations. The revised definition retained coverage for sales made at a buyer's residence that have a purchase price of \$25 or more. The final rule amendment was effective on March 13, 2015.

*Rules.* During 2024, the Commission plans to initiate periodic review of Rules and Regulations under the Wool Products Labeling Act of 1939, 16 CFR part 300, Rules and Regulations under Fur Products Labeling Act, 16 CFR part 301, Rules and Regulations under the Textile Fiber Products Identification Act, 16 CFR part 303, the Mail, Internet, or Telephone Order Merchandise Rule, 16 CFR part 435, and Retail Food Store Advertising and Marketing Practices (Unavailability Rule), 16 CFR part 424.

*Guides.* During 2024, the Commission plans to initiate periodic review of the Guides for the Rebuilt, Reconditioned, and Other Used Automobile Parts Industry, 16 CFR part 20, and the Guides for Advertising Allowances and Other Merchandising Payments and Services (Fred Meyer Guides), 16 CFR part 240.

## **(2) Ongoing Periodic Reviews of Rules and Guides**

The following proceedings for the retrospective review of Commission rules and guides described in the 2022 Regulatory Plan are ongoing:

*Hart-Scott-Rodino Antitrust Improvements Act Coverage, Exemption, and Transmittal Rules, 16 CFR parts 801–803.* On December 1, 2020, the Commission initiated the periodic review of the Hart-Scott-Rodino Antitrust Improvements Act's Coverage, Exemption, and Transmittal Rules (HSR Rules) as part of the Commission's systematic review of all current Commission rules and guides.<sup>25</sup> The comment period closed on February 1, 2021. The HSR Rules and the Antitrust Improvements Act Notification and Report Form (HSR Form) was adopted pursuant to section 7A of the Clayton Act, which requires firms of a certain size contemplating mergers, acquisitions, or other transactions of a specified size to file

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<sup>24</sup> 80 FR 1329 (Jan. 9, 2015).

<sup>25</sup> 85 FR 77042 (Dec. 1, 2020).

notification with the FTC and the DOJ and to wait a designated period of time before consummating the transaction. On June 29, 2023, the Commission issued a notice of proposed rulemaking on substantive HSR Form changes, including implementing congressionally mandated reporting requirements on foreign subsidies.<sup>26</sup> The extended public comment period closed on September 27, 2023.<sup>27</sup> Staff is reviewing the public comments. By February 2024, staff anticipates that the Commission will issue a final rule to transition the HSR Form and Instructions to the new cloud-based e-filing system.

*Business Opportunity Rule, 16 CFR part 437.* On November 25, 2022, the Commission initiated a periodic review of the Business Opportunity Rule.<sup>28</sup> The Commission sought comments on, among other things, the economic impact, and benefits of this rule; possible conflict between the rule and State, local, or other Federal laws or regulations; and the effect on the rule of any technological, economic, or other industry changes. The comment period as extended closed on January 31, 2023. Staff is currently reviewing the public comments. Effective in 2012, the Rule requires business-opportunity sellers to furnish prospective purchasers with a disclosure document that provides information regarding the seller, the seller's business, and the nature of the proposed business opportunity, as well as additional information to substantiate any claims about actual or potential sales, income, or profits for a prospective business-opportunity purchaser. The seller must also preserve information that forms a reasonable basis for such claims.

*Children's Online Privacy Protection Rule, 16 CFR part 312.* On July 25, 2019, the Commission issued a request for public comment on its Children's Online Privacy Protection Rule ("COPPA Rule").<sup>29</sup> Although the Commission's last COPPA Rule review ended in 2013, the Commission initiated this review early in light of changes in the marketplace. Following an extension, the public comment period closed on December 9, 2019.<sup>30</sup> The FTC sought comment on all major provisions of the COPPA Rule, including its definitions, notice and parental-consent requirements, exceptions to verifiable parental consent, and safe-

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<sup>26</sup> 88 FR 42178 (June 29, 2023).

<sup>27</sup> 88 FR 54256 (Aug. 10, 2023).

<sup>28</sup> 87 FR 72428 (Nov. 25, 2022).

<sup>29</sup> 84 FR 35842 (July 25, 2019).

<sup>30</sup> 84 FR 56391 (Oct. 22, 2019).



harbor provision. The FTC hosted a public workshop to address issues raised during the review of the COPPA Rule on October 7, 2019. Staff is analyzing and reviewing public comments.

*Eyeglass Rule, 16 CFR part 456.* As part of the systematic review process, the Commission sought public comments about the Trade Regulation Rule on Ophthalmic Practice Rules (Eyeglass Rule) on September 3, 2015,<sup>31</sup> and the comment period closed on October 26, 2015. Commission staff completed review of the 868 comments received from consumers, eye care professionals, industry members, trade associations, and consumer advocates. The Eyeglass Rule requires that an optometrist or ophthalmologist give the patient, at no extra cost, a copy of the eyeglass prescription immediately after the examination is completed. The Rule also prohibits optometrists and ophthalmologists from conditioning the availability of an eye examination, as defined by the Rule, on a requirement that the patient agree to purchase ophthalmic goods from the optometrist or ophthalmologist. On January 3, 2023, the Commission issued a notice of proposed rulemaking that would require ophthalmologists and optometrists to provide patients with a copy of their prescription immediately after the completion of a refractive eye exam, get a signed statement from the patient confirming that they have received their prescription, and keep a record of that confirmation for at least three years.<sup>32</sup> The comment period closed on March 6, 2023, and staff is reviewing the comments. The Commission held a public workshop on May 18, 2023, and staff is reviewing the comments.<sup>33</sup>

*Franchise Rule, 16 CFR part 436.* On March 15, 2019, the Commission initiated a periodic review of the Franchise Rule (formally “Disclosure Requirements and Prohibitions Concerning Franchising”).<sup>34</sup> The comment period closed on April 21, 2019. The Commission then held a public workshop on November 10, 2020. The closing date for written comments related to the issues discussed at the workshop was December 17, 2020.<sup>35</sup> Staff continues to evaluate the record and review the public comments. The Rule is intended to give prospective purchasers of franchises the material information they need to weigh the risks and benefits of such an investment. The Rule requires franchisors to provide

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<sup>31</sup> 80 FR 53274 (Sept. 3, 2015).

<sup>32</sup> 88 FR 248 (Jan. 3, 2023).

<sup>33</sup> 88 FR 18266 (Mar. 28, 2023).

<sup>34</sup> 84 FR 9051 (Mar. 13, 2019).

<sup>35</sup> 85 FR 55850 (Sept. 10, 2020).

all potential franchisees with a disclosure document containing 23 specific items of information about the offered franchise, its officers, and other franchisees. Required disclosure topics include, for example, the franchise's litigation history; past and current franchisees and their contact information; any exclusive territory that comes with the franchise; assistance the franchisor provides franchisees; and the cost of purchasing and starting up a franchise.

*Health Breach Notification Rule, 16 CFR part 318.* On May 22, 2020, the Commission initiated a periodic review of the Health Breach Notification Rule.<sup>36</sup> The comment period closed on August 20, 2020. On June 9, 2023, the Commission proposed to amend the Rule in seven ways and requested comment on the proposed changes.<sup>37</sup> The comment period closed on August 8, 2023, and staff is reviewing the comments. The Rule requires vendors of personal health records (PHR) and PHR-related entities to provide: (1) notice to consumers whose unsecured personally identifiable health information has been breached; and (2) notice to the Commission. Under the Rule, vendors must notify both the FTC and affected consumers whose information has been affected by a breach “without unreasonable delay and in no case later than 60 calendar days” after discovery of a data breach. Among other information, the notices must provide consumers with steps they can take to protect themselves from harm.

*Identity Theft Rules, 16 CFR part 681.* In December 2018, the Commission initiated a periodic review of the Identity Theft Rules, which include the Red Flags Rule and the Card Issuer Rule.<sup>38</sup> FTC staff is reviewing the comments received. The Red Flags Rule requires financial institutions and creditors to develop and implement a written identity theft prevention program (a “Red Flags Program”). By identifying red flags for identity theft in advance, businesses can be better equipped to spot suspicious patterns that may arise and take steps to prevent potential problems from escalating into a costly episode of identity theft. The Card Issuer Rule requires credit and debit card issuers to implement reasonable policies and procedures to assess the validity of a change of address if they receive notification of a change of address for a consumer's debit or credit card account and, within a short period of time afterwards, also receive a request for an additional or replacement card for the same account.

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<sup>36</sup> 85 FR 31085 (May 22, 2020).

<sup>37</sup> 88 FR 37819 (June 9, 2023).

<sup>38</sup> 83 FR 63604 (Dec. 11, 2018).

*Leather Guides, 16 CFR part 24.* On March 6, 2019, the Commission initiated a periodic review of the Leather Guides, formally known as the Guides for Select Leather and Imitation Leather Products.<sup>39</sup> The comment period closed on April 22, 2019. The Leather Guides apply to the manufacture, sale, distribution, marketing, or advertising of leather or simulated leather purses, luggage, wallets, footwear, and other similar products. The Guides address misrepresentations regarding the composition and characteristics of specific leather and imitation leather products.

*Negative Option Rule, 16 CFR part 310.* On October 2, 2019, the Commission issued an advance notice of proposed rulemaking seeking public comment on the effectiveness and impact of the Trade Regulation Rule on Use of Prenotification Negative Option Plans (Negative Option Rule).<sup>40</sup> On April 24, 2023, the Commission published a notice of proposed rulemaking to amend the existing Rule to implement new requirements to provide important information to consumers, obtain consumers' express informed consent, and ensure consumers can easily cancel these programs when they choose.<sup>41</sup> The comment period closed on June 23, 2023. Staff is currently reviewing the public comments.

#### **b. Proposed Rules**

Since the publication of the 2022 Regulatory Plan, the Commission has initiated or plans to take further steps as described below in the following rulemaking proceedings:

*Energy Labeling Rule, 16 CFR part 305.* The Energy Labeling Rule requires energy labeling for major home appliances and other consumer products to help consumers compare the energy usage and costs of competing models. On October 25, 2022, the Commission issued an advance notice of proposed rulemaking that sought public comment on potential amendments to the Rule, including energy labels for several new consumer product categories, other possible amendments to improve the Rule's effectiveness, and reducing unnecessary burdens.<sup>42</sup> The comment period as extended closed on January 31, 2023.<sup>43</sup> Staff is currently reviewing the public comments.

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<sup>39</sup> 84 FR 8045 (Mar. 6, 2019).

<sup>40</sup> 84 FR 52393 (Oct. 2, 2019).

<sup>41</sup> 88 FR 24716 (Apr. 24, 2023).

<sup>42</sup> 87 FR 64399 (Oct. 25, 2022).

<sup>43</sup> 88 FR 4796 (Jan. 25, 2023).

*Power Output Claims for Amplifiers Utilized in Home Entertainment Products, 16 CFR part 432.*

On December 18, 2020, the Commission initiated a periodic review of the Amplifier Rule (formally “Power Output Claims for Amplifiers Utilized in Home Entertainment Products Rule”).<sup>44</sup> The Commission sought comments on, among other things, the economic impact, and benefits of this Rule; possible conflict between the Rule and State, local, or other Federal laws or regulations; and the effect on the Rule of any technological, economic, or other industry changes. The Amplifier Rule establishes uniform test standards and disclosures so that consumers can make more meaningful comparisons of amplifier-equipment performance attributes. On July 27, 2022, the Commission sought public comment on a proposal to amend the Rule to require sellers making power-related claims to calculate power output using uniform testing methods to allow consumers to easily compare amplifier sound quality.<sup>45</sup> Additionally, for multichannel home theater amplifiers the Commission sought comment about how to set test conditions to reflect typical consumer use. The comment period closed on September 26, 2022. On August 21, 2023, the Commission issued a supplemental notice of proposed rulemaking.<sup>46</sup> The comment period closed on October 23, 2023.

*Telemarketing Sales Rule, 16 CFR part 310.* On August 11, 2014, the Commission initiated a periodic review of the Telemarketing Sales Rule (TSR).<sup>47</sup> The comment period as extended closed on November 13, 2014.<sup>48</sup> On June 3, 2022, the Commission issued a notice of proposed rulemaking seeking public comment on proposed amendments to the TSR.<sup>49</sup> The proposed amendments would require telemarketers and sellers to maintain additional records of their telemarketing transactions, prohibit material misrepresentations and false or misleading statements in business-to-business telemarketing transactions, and add a new definition for the term “previous donor.” The comment period closed on August 2, 2022, and the Commission has received 25 comments to date. Also on June 3, 2022, the Commission issued an advance notice of proposed rulemaking seeking public comment on whether the TSR should continue to exempt telemarketing calls to businesses, whether the TSR should require a

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<sup>44</sup> 85 FR 82391 (Dec. 18, 2020).

<sup>45</sup> 87 FR 45047 (July 27, 2022).

<sup>46</sup> 88 FR 56780 (Aug. 21, 2023).

<sup>47</sup> 79 FR 46732 (Aug. 11, 2014).

<sup>48</sup> 79 FR 61267 (Oct. 10, 2014).

<sup>49</sup> 87 FR 33677 (June 3, 2022).

notice and cancellation mechanism with negative option sales, and whether to extend the TSR to apply to telemarketing calls that consumers initiate to a telemarketer (i.e., inbound telemarketing calls) regarding computer technical support services.<sup>50</sup> The comment period closed on August 2, 2022. Staff is reviewing the comments.

*Non-Compete Clause Rule, proposed to be codified at 16 CFR part 901.* On January 19, 2023, the Commission proposed the Non-Compete Clause Rule.<sup>51</sup> The proposed rule would, among other things, provide that it is an unfair method of competition for an employer to enter into or attempt to enter into a non-compete clause with a worker; to maintain with a worker a non-compete clause; or, under certain circumstances, to represent to a worker that the worker is subject to a non-compete clause. On February 16, 2023, the Commission hosted a public forum that examined the FTC's proposed rule and provided an opportunity for interested parties to directly share their experiences with non-compete clauses. The comment period as extended closed on April 19, 2023. Staff is reviewing the comments.

*Motor Vehicle Dealers Trade Regulation Rule, proposed to be codified at 16 CFR part 463.* On July 13, 2022, the Commission issued a notice of proposed rulemaking soliciting public comment on a proposed Rule regarding unfair or deceptive acts or practices under its authority with respect to motor vehicle dealers described in section 1029(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.<sup>52</sup> The proposed rule would prohibit motor vehicle dealers from making certain misrepresentations in the course of selling, leasing, or arranging financing for motor vehicles; require accurate pricing disclosures in dealers' advertising and sales discussions; require dealers to obtain consumers' express, informed consent for charges; prohibit the sale of any add-on product or service that confers no benefit to the consumer; and require dealers to keep records of advertisements and customer transactions. The public comment period closed on September 12, 2022. Staff is reviewing the public comments.

*Trade Regulation Rule on Impersonation of Government and Businesses, proposed to be codified at 16 CFR part 461.* On October 17, 2022, the Commission issued a notice of proposed rulemaking to

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<sup>50</sup> 87 FR 33662 (June 3, 2022).

<sup>51</sup> 88 FR 3482 (Jan. 19, 2023).

<sup>52</sup> 87 FR 42012 (July 13, 2022).

address certain deceptive or unfair acts or practices of impersonation of government and business officials.<sup>53</sup> The public comment period closed on December 16, 2022. An informal hearing was held on May 4, 2023, at which oral testimony<sup>54</sup> was provided and additional written testimony was accepted. Staff is reviewing the comments.

*Earnings Claims Trade Regulation Rule, proposed to be codified at 16 CFR part 462.* On March 11, 2022, the Commission issued an advance notice of proposed rulemaking seeking public comment about a potential rule to address deceptive or unfair marketing using earnings claims.<sup>55</sup> The comment period closed on May 10, 2022. Staff is reviewing the comments.

*Trade Regulation Rule on Commercial Surveillance, 16 CFR part undetermined.* On August 22, 2022, the Commission issued an advance notice of proposed rulemaking under section 18 of the FTC Act to limit privacy abuses, curb lax security practices, and ensure that algorithmic decision-making does not result in unlawful discrimination.<sup>56</sup> The Commission sought public comment on whether new rules are needed to protect people's privacy and information in the commercial surveillance economy. On September 8, 2022, the Commission hosted a public forum regarding its ANPR on commercial surveillance and data security practices that harm consumers and competition. The public forum included panel discussions and members of the public provided remarks. The ANPR's extended public comment period closed on November 21, 2022.<sup>57</sup> Staff is reviewing the public comments.

*Funeral Rule, 16 CFR part 453.* On February 14, 2020, the Commission initiated a periodic review of the Funeral Industry Practices Rule (Funeral Rule).<sup>58</sup> The comment period as extended closed on June 15, 2020.<sup>59</sup> The Funeral Rule, which became effective in 1984, requires sellers of funeral goods and services to give price lists to consumers who visit or call a funeral home. On November 2, 2022, the Commission issued an advance notice of proposed rulemaking seeking comment on potential updates to

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<sup>53</sup> 87 FR 62741 (Oct. 17, 2022).

<sup>54</sup> See Fed. Trade Comm'n, Transcript of Informal Hearing Before the Administrative Law Judge on Government and Business Impersonation Rule (May 4, 2023), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/impersonationruleinformalhearingtranscript.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/impersonationruleinformalhearingtranscript.pdf).

<sup>55</sup> 87 FR 13951 (Mar. 11, 2022).

<sup>56</sup> 87 FR 51273 (Aug. 22, 2022).

<sup>57</sup> 87 FR 63738 (Oct. 20, 2022).

<sup>58</sup> 85 FR 8490 (Feb. 14, 2020).

<sup>59</sup> 85 FR 20453 (Apr. 13, 2020).

modernize the Funeral Rule, including improvements to the public accessibility of funeral home price information.<sup>60</sup> The comment period closed on January 3, 2023. The Commission also issued a staff report that summarizes the results of staff's review of almost 200 funeral provider websites.<sup>61</sup> The Commission held a public workshop on September 7, 2023.<sup>62</sup> The workshop explored issues relating to the Funeral Rule's General Price List requirements, including whether and how funeral providers should be required to provide price lists electronically or online, and other issues raised in the comments received in response to the 2022 ANPR. The comment period for any written comments related to the issues discussed at the workshop closed on October 10, 2023. Staff is reviewing the public comments.

*Unfair or Deceptive Fees Trade Regulation Rule, proposed to be codified at 16 CFR part 464.* On November 8, 2022, the Commission issued an advance notice of proposed rulemaking to address certain deceptive or unfair acts or practices related to fees.<sup>63</sup> The public comment period closed on January 9, 2023. On October 11, 2023, the Commission announced that it was publishing a notice of proposed rulemaking to promulgate a trade regulation rule entitled "Rule on Unfair or Deceptive Fees," which would prohibit unfair or deceptive practices relating to fees for goods or services, specifically, misrepresenting the total costs of goods and services by omitting mandatory fees from advertised prices and misrepresenting the nature and purpose of fees. The public comment period will close 60 days after publication in the **Federal Register**.

*Trade Regulation Rule on the Use of Reviews and Endorsements, proposed to be codified at 16 CFR part 465.* On November 8, 2022, the Commission issued an advance notice of proposed rulemaking to address certain deceptive or unfair acts or practices concerning reviews and endorsements.<sup>64</sup> The

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<sup>60</sup> 87 FR 66096 (Nov. 2, 2022).

<sup>61</sup> See Fed. Trade Comm'n, FTC Seeks to Improve the American Public's Access to Funeral Service Prices Online (Oct. 20, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-seeks-improve-american-publics-access-funeral-service-prices-online>.

<sup>62</sup> 88 FR 33011 (May 23, 2023).

<sup>63</sup> 87 FR 67413 (Nov. 8, 2022); see also Fed. Trade Comm'n, Federal Trade Commission Explores Rule Cracking Down on Junk Fees (Oct. 20, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/federal-trade-commission-explores-rule-cracking-down-junk-fees>.

<sup>64</sup> 87 FR 67424 (Nov. 8, 2022); see also Fed. Trade Comm'n, Federal Trade Commission to Explore Rulemaking to Combat Fake Reviews and Other Deceptive Endorsements (Oct. 20, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-explore-rulemaking-combat-fake-reviews-other-deceptive-endorsements>.

public comment period closed on January 9, 2023. On July 31, 2023, the Commission issued a notice of proposed rulemaking seeking public comments concerning the utility and scope of the proposed trade regulation rule to prohibit the specified unfair or deceptive acts or practices.<sup>65</sup> The comment period closed on September 29, 2023, and staff is reviewing the comments.

### **c. Final Actions**

Since the publication of the 2022 Regulatory Plan, the Commission has issued the following final agency actions in rulemaking and guide proceedings:

*Endorsement Guides, 16 CFR part 255.* On July 26, 2023, the Commission adopted revised Endorsement Guides to reflect the ways advertisers now reach consumers to promote products and services, including through social media and reviews.<sup>66</sup> The Guides provide agency guidance to businesses and others to ensure that advertising using reviews or endorsements is truthful. The final revised Guides took the public comments received into consideration and make a number of revisions including: (1) articulating a new principle regarding procuring, suppressing, boosting, organizing, publishing, upvoting, downvoting, or editing consumer reviews so as to distort what consumers think of a product; (2) addressing incentivized reviews, reviews by employees, and fake negative reviews of a competitor; (3) adding a definition of “clear and conspicuous” and saying that a platform’s built-in disclosure tool might not be an adequate disclosure; (4) changing the definition of “endorsements” to clarify the extent to which it includes fake reviews, virtual influencers, and tags in social media; (5) better explaining the potential liability of advertisers, endorsers, and intermediaries; and (6) highlighting that child-directed advertising is of special concern. In many instances the revisions responded to comments by adding to or modifying the hypothetical examples that illustrate the principles of the Guides. For example, within section 255.2 concerning consumer endorsements, staff modified Example 8 to clarify that a particular seller must display reviews about its own customer service but need not display reviews about the customer service of a different seller.

*Safeguards Rule (Standards for Safeguarding Customer Information), 16 CFR part 314.* On December 9, 2021, the Commission issued a supplemental notice of proposed rulemaking that proposes

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<sup>65</sup> 88 FR 49364 (July 31, 2023).

<sup>66</sup> 88 FR 48092 (July 26, 2023).



to amend the Safeguards Rule to require financial institutions to report to the Commission any security event where the financial institutions have determined misuse of customer information has occurred or is reasonably likely and that at least 1,000 consumers have been affected or reasonably may be affected.<sup>67</sup> The comment period closed on February 7, 2022. On October 27, 2023, the Commission announced a final rule amendment that requires covered financial institutions to notify the FTC as soon as possible, and no later than 30 days after discovery, of a security breach involving the information of at least 500 consumers. Such an event requires notification if unencrypted customer information has been acquired without the authorization of the individual to which the information pertains. The notice to the FTC must include certain information about the event, such as the number of consumers affected or potentially affected. The breach notification requirement becomes effective 180 days after publication of the rule in the **Federal Register**.

#### **d. Significant Regulatory Actions**

The Commission has three proposed rules that would be a “significant regulatory action” under the definition in section 3(f) of Executive Order 12866: the proposed Motor Vehicle Dealers Trade Regulation Rule, to be codified at 16 CFR part 463, the proposed Non-Compete Clause Rule to be codified at 16 CFR 910, and the proposed substantive HSR form changes under the Hart-Scott-Rodino Antitrust Improvements Act Coverage, Exemption, and Transmittal Rules, 16 CFR parts 801–803.

The Commission has no proposed rule that would have significant international impacts or any international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations, as defined in Executive Order 13609.

#### **Summary**

The actions under consideration advance the Commission’s mission by informing and protecting consumers while minimizing burdens on honest businesses. The Commission continues to identify and weigh the costs and benefits of proposed regulatory actions and possible alternative actions.

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<sup>67</sup> 86 FR 70062 (Dec. 9, 2021).

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